

**STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE**

REQUEST: June 22, 2005
CASE #: XXXXX
AGENCY: Suffolk
FH #: 4358685Z

In the Matter of the Appeal of
C S
from a determination by the Suffolk County
Department of Social Services

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**DECISION
AFTER
FAIR
HEARING**

JURISDICTION

Pursuant to Section 22 of the New York State Social Services Law (hereinafter Social Services Law) and Part 358 of Title 18 NYCRR, (hereinafter Regulations), a fair hearing was held on October 7, 2005, in Suffolk County, before Timothy Hannon, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

C S, Appellant
Harold Steinberg, Attorney at Law

For the Social Services Agency

Eileen Alheidt, Fair Hearing Representative

ISSUE

Was the Agency's determination to discontinue the Appellant's Public Assistance on the grounds that the Appellant refused to cooperate and participate in the assessment process correct?

FINDINGS OF FACT

An opportunity to be heard having been afforded to all interested parties and evidence having been taken and due deliberation having been had, it is hereby found that:

1. The Appellant, age 49, has been in receipt of Public Assistance for a household of one.
2. The Appellant is not the parent or caretaker of a dependent child.

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3. The Appellant was advised by letter dated April 18, 2005, to report on May 5, 2005, to an Orientation Appointment at Suffolk County Department of Labor (DOL).

4. The Appellant failed to report to the assigned Orientation Appointment at the DOL on May 5, 2005.

5. On June 15, 2005 the Agency notified the Appellant of its intent to discontinue the Appellant's Public Assistance grant until the Appellant is willing to comply with employment requirements and on the grounds that the Appellant refused to cooperate and participate in an assessment.

6. On June 22, 2005, the Appellant requested this fair hearing.

APPLICABLE LAW

Section 131.5 of the Social Services Law provides that no Public Assistance shall be given to an applicant for or recipient of Public Assistance who has failed to comply with the requirements of the Social Services Law, or has refused to accept employment in which he or she is able to engage. Section 131(7)(b) of the Social Services Law provides that where a persons is judged employable or potentially employable, a social services official may require such person to receive suitable medical care and/or undergo suitable instruction and/or work training. A person who refuses to accept such care or undergo such instruction or training is ineligible for Public Assistance and care.

Section 335-a of the Social Services Law and 12 NYCRR 1300.7 requires that to the extent resources are available, social services official shall, within a reasonable period of time not to exceed one year following application for safety net assistance conduct an assessment of employability of applicants and recipients in households without dependent children who are not exempt from assignment to work activities. Such assessment shall include, but not be limited to a review of the individual's educational level, including literacy and English language proficiency; basic skills proficiency; supportive services needs; and the skills, prior work experience, training and vocational interests of each participant. This assessment shall include a review of family circumstances.

An applicant or recipient may be assigned to work activities prior to the completion of the assessment.

Based on the assessment, the social services official will develop an employability plan in consultation with the recipient, which shall set forth:

- (a) services that will be provided, including supportive services;
- (b) work activities to which the individual will be assigned;

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- (c) the individual's employment goal.

The plan shall take into account the individual's:

- (a) supportive service needs;
- (b) available program resources;
- (c) local employment opportunities;
- (d) liability for student loans, grants and scholarship awards if the recipient is assigned to an education program.

Notwithstanding the requirement that the employability be based on the assessment, in developing the employability plan, the social services official must consider the needs of the social services district to meet state work activity participation rates before completing an individual's employability plan.

Each applicant for or recipient of Public Assistance must participate in an assessment as required by the social services district. Entire households of applicants who fail or refuse to participate with the requirements of this section shall be ineligible for Public Assistance. Recipients who fail or refuse to participate with the requirements of this section have the right to a conciliation pursuant to Section 341 of the Social Services Law and 12 NYCRR 1300.11 and shall be subject to the sanctions set forth in section 342 of the Social Services Law and 12 NYCRR 1300.12.

Social services officials are required by Section 341 of the Social Services Law and 12 NYCRR 1300.11 to establish a conciliation procedure for applicants and recipients of Public Assistance.

A social services official must issue a notice to each applicant or recipient who refuses or fails to comply with public assistance employment program requirements of Article 9-B of the Social Services Law (Sections 330 - 342). Such notice must advise the individual of his or her refusal or failure to comply, that the individual has the right to provide reasons for such failure or refusal to participate and that he or she has a specified number of days to request conciliation. Applicants and recipients for Safety Net Assistance have seven days to request conciliation and applicants and recipients for Family Assistance have 10 days to request conciliation.

If the individual requests conciliation within the specified number of days, conciliation shall not last longer than 14 days from the date of the conciliation request in the case of an applicant or recipient of Safety Net, and 30 days from the date of the conciliation notice in the case of a Family Assistance applicant/recipient and it will be the individual's responsibility to provide reasons for such refusal or failure to comply.

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If the district determines that the individual's refusal or failure to comply was willful and without good cause, then the social services official must issue a 10 day notice of intent to reduce or discontinue assistance.

If the participant does not respond to the conciliation letter issued by the social services official within the specified number of days then the social services official must issue a notice to deny Public Assistance or a ten day notice of intent to discontinue or reduce Public Assistance.

Social services officials are responsible for determining good cause. The official must consider the facts and circumstances, including information submitted by the individual subject to such requirements. Good cause includes circumstances beyond the individual's control, such as but not limited to, illness of the member, illness of another household member requiring the presence of the member, a household emergency, or the lack of adequate child care for children who have reached the age of six but are under age 13. The applicant or recipient is responsible for notifying the Agency of the reasons for failing to comply with an eligibility requirement and for furnishing evidence to support any claim of good cause. The Agency must review the information and evidence provided and make a determination of whether the information and evidence supports a finding of good cause. 12 NYCRR 1300.12(c).

Section 342 of the Social Services Law and 12 NYCRR 1300.12 provides that in the case of an individual who is a member of a household without dependent children applying for or in receipt of safety net assistance the Public Assistance benefits otherwise available to the household of which such individual is a member shall be reduced pro-rata:

- (a) For the first such failure or refusal to comply, a period of ninety days and thereafter until willing to comply;
- (b) For the second such failure or refusal to comply, a period of 150 days and thereafter until willing to comply; and
- (c) For the third and all subsequent such failures or refusals, a period of 180 days and thereafter until willing to comply.

Willing to comply means that an individual, as required by a district, reports to an assigned work activity site or other location as assigned by the district on time and prepared to engage in the assigned activity.

DISCUSSION

The Agency's position is that on April 18, 2005, a letter was mailed to the Appellant advising her of her May 5, 2005, Orientation Appointment, and that the Appellant willfully and without good cause failed to report to assigned appointment with the DOL. Based upon this failure to report for her appointment the Agency issued the notice discontinuing the Appellant's Public Assistance(PA) and Medical Assistance(MA).

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The Appellant's representative acknowledged that the Appellant failed to report to the scheduled appointment but contends that the action was not willful nor without good cause, as his client never received the appointment letter and was not advised of the appointment, as the original of the letter was never mailed to the Appellant.

The Representative, in support of his position, filed two affirmations by attorneys from the Nassau Suffolk Law Services (NSLS) which state that the attorneys, with the permission of the Agency, were at the Agency, reviewing the Appellant's file, in contemplation of the fair hearing and discovered the original of the subject letter, which the Agency alleged was mailed to the Appellant and which they contend advised her of the subject appointment.

The Representative's contention is that the Agency mailing procedure has been testified to many times and has been represented as intractable on the following points: One: the original of the letter is placed in a window envelope and entrusted to the mail room. Two: the mail room delivers same to the U.S.P.S. which has instructions to deliver mail only to the addressee at the address of record or return to the Agency. Here, the original letter was discovered in the file and presumptively the Agency's mailing procedure establishes that the original letter was not mailed to the Appellant and therefore, she has established good cause for failing to report for her Orientation Appointment.

The Agency provided a statement from the Principal Clerk at the Suffolk County Department of Labor which states in sum and substance that, contrary to the Agency's well established mailing procedure, the Agency, "being only human", sometimes mails a copy instead of the original of the letter. The Clerk assures the Agency, and this court, that "there is virtually no difference between the copy and the original" and "only if the letter is handwritten, which is sometimes done, would this be different". [Note, under the facts in this record the letter was handwritten.]

The Agency contends that the original discovered in the Appellant's case file was the original and the copy was mailed to the Appellant. It contends that the error is a harmless error and, as such, continues to establish that the Appellant was provided the subject letter and thereby willfully and without good cause failed to report for her appointment.

The Agency has not established that the subject letter was mailed in accordance with its own mailing process. There is no presumption of receipt of the mail until the agency establishes its mailing process and demonstrates that the subject letter was mailed in compliance with that mailing process. In this case the agency established its mailing process but failed to demonstrate that the letter was mailed in accordance with that process. Therefore, the Agency's determination was not correct and is reversed. .

DECISION AND ORDER

The Agency's determination to discontinue the Appellant's Public Assistance on the grounds that The Appellant refused to cooperate and participate in the assessment process was not correct and is reversed.

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1. The Agency is directed to continue the Appellant's Public Assistance grant unchanged and to restore any assistance withheld as a result of the Agency's action retroactive to the date of discontinuance.

Should the Agency need additional information from the Appellant in order to comply with the above directives, it is directed to notify the Appellant promptly in writing as to what documentation is needed. If such information is requested, the Appellant must provide it to the Agency promptly to facilitate such compliance.

As required by 18 NYCRR 358-6.4, the Agency must comply immediately with the directives set forth above.

DATED: Albany, New York
November 25, 2005

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

[[Signature]]

Commissioner's Designee